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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAMUEL HERSHEL CLAUDER, II,

Real Party in Interest.

E064859

(Super.Ct.No. FSB900759)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. R. Glenn Yabuno,
Judge. The petition is granted in part and denied in part.

Jean-Rene Basle, County Counsel, and Richard D. Luczak, Deputy County
Counsel, for Petitioner.

No appearance for Respondent.

Tomlinson & Prince, Timothy P. Prince, for Real Party in Interest.

In this matter we have reviewed the petition and the response filed by real party in interest. We conclude that the proper resolution of the matter lies somewhere between the positions of the parties.

Petitioner appears to be correct that it would be inappropriate, if not illegal, to return illegal images of child pornography to real party in interest. The difficulty is that petitioner has never demonstrated to the court that such an image or images are in fact on the computer. And we also note that if any such images *do* exist, it would obviously be damaging to real party in interest's claim that he was wrongly prosecuted.

We also find real party in interest's reliance on Penal Code section 1054.10 misplaced. That statute creates a limited exception to the restrictions on dissemination of illegal images of minors that applies only to criminal prosecution. It does not authorize any party to possess such images for the purposes of prosecuting a civil lawsuit.

Accordingly, we resolve the problem—at least for the time being—in this way.

DISPOSITION

The petition for writ of mandate is granted in part and denied in part. The San Bernardino Superior Court shall conduct further proceedings in which petitioner may seek a ruling that one or more images is illegal and may not be possessed by real party in interest. Any such image(s) shall be removed from the computer and, if possible, copied to a secure computer maintained by petitioner under such terms as the parties may agree or the court shall order. If the court rules that the computer contains no illegal images, the computer shall be returned to real party in interest forthwith.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. This order shall be final 15 days after the date of entry. The parties are each to bear their own costs.

The stay previously ordered on November 24, 2016, is DISSOLVED on the understanding that the computer will remain in petitioner's custody until the trial court resolves the above issues.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

KING
J.